

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: Thomas BRYAN )

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For: Modular Fence )

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Signed:  )

Michael T. Griggs

Dated: August 1, 2006

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AMENDMENT**

Sir,

This amendment is in response to the Office action mailed on May 16, 2006 for this application.

**IN THE CLAIMS:**

Please amend the claims:

1. (Currently amended) A fence module for use in a burrowing-animal discouraging modular fence, comprising:

a plurality of generally parallel elongate members each having an upper end and a tapered lower end;  
upper and lower crossbars connecting said plurality of elongate members in a row comprising a pair of end members and a plurality of intermediate members, wherein said elongate members have a spacing of between about 1 inch and about 2 ½ inches, each of said upper and lower crossbars comprising a continuous, solid, homogeneously formed and unbroken member;  
a connector extending outwardly beyond at least one of said pair of end members for closely connecting said module to another module;  
said tapered lower ends of said elongate members extending at least about 3 inches below said lower crossbar for insertion into ground;  
said elongate members extending at least about 16 inches above said lower crossbar.

2. (original) A fence module according to claim 1, wherein said upper crossbar extends across and covers said upper ends of said plurality of elongate members.

3. (original) A fence module according to claim 1, wherein said spacing between said elongate members is uniform.

4. (canceled).

5. (original) A fence module according to claim 1, wherein said module is made from aluminum.

6. (original) A fence module according to claim 1, wherein said row of elongate members is generally straight.

7. (original) A fence module according to claim 1, wherein said row of elongate members is curved.

8. (original) A fence module according to claim 7, wherein said curved row of elongate members forms an arc of between about 30° and about 90°.

9. (original) A fence module according to claim 7, wherein said curved row of elongate members forms an arc of between about 60°.

10. (original) A fence module according to claim 1, wherein said module is about 2 feet long.

11. (original) A fence module according to claim 1, wherein said elongate members extend between about 16 inches and about 24 inches above said lower crossbar.

12. (currently amended) A fence module for use in a burrowing-animal discouraging modular fence, comprising:

a plurality of generally parallel elongate members each having an upper end and a tapered lower end;

upper and lower crossbars connecting said plurality of elongate members in a row comprising a pair of end members and a plurality of intermediate members, wherein said elongate members have a spacing of between about 1 inch and about 2 ½ inches, each of said upper and lower crossbars comprising a continuous, solid, homogeneously formed and unbroken member;

two pairs of lips, each pair comprising upper and lower lips, each pair of lips extending outwardly beyond a corresponding one of said pair of end members, each of said pairs of lips providing guides for receiving an elongate stake for connecting each pair of lips to a corresponding pair of lips on another module, wherein said elongate stake includes a tapered lower end for insertion into ground, wherein spacing between said elongate stake and the corresponding end member is not more than about 2 ½ inches;

said tapered lower ends of said elongate members extending at least about 3 inches below said lower crossbar for insertion into ground;

said elongate members extending at least about 16 inches above said lower crossbar.

13. (original) A fence module according to claim 12, wherein said spacing between said elongate members and between said elongate stake and said corresponding end member is uniform.

14. (currently amended) A modular fence for discouraging burrowing animals, comprising:

a plurality of modules each having;

a plurality of generally parallel elongate members each having an upper end and a tapered lower end;

upper and lower crossbars connecting said plurality of elongate members in a row comprising a pair of end members and a plurality of intermediate members, wherein said elongate members have a spacing of between about 1 inch and about 2 ½ inches, each of said upper and lower crossbars comprising a continuous, solid, homogeneously formed and unbroken member;

two pairs of lips, each pair comprising upper and lower lips, each pair of lips extending outwardly beyond a corresponding one of said pair of end members, each of said pairs of lips providing guides for receiving an elongate stake for connecting each pair of lips to a corresponding pair of lips on another module; said tapered lower ends of said elongate members extending at least about 3 inches below said lower crossbar for insertion into ground;

said elongate members extending at least about 16 inches above said lower crossbar;

wherein some of said plurality of said modules each include a generally straight row of said elongate members;

wherein some of said plurality of said modules each include a curved row of said elongate members;

wherein said elongate stake includes a tapered lower end for insertion into said ground, and wherein said elongate stake is no more than about 2 ½ inches away from said corresponding end members of said connected modules.

15. (original) A modular fence according to claim 14, further comprising an anchor brace inserted into said ground, said anchor brace having a cross section that is larger than said elongate stake and said members and at least one lip protruding outwardly from said brace, said lip of said brace including a guide for receiving said elongate stake.

16. (canceled).

**REMARKS**

This amendment is intended to respond fully to the Office action mailed May 16, 2006, and to place this application in condition for allowance. Claim 4 is canceled.

**Drawings Objection – 37 C.F.R. 1.83(a)**

The drawings were objected to under 37 C.F.R. 1.83(a) based upon the language “tubular” in claim 4. Accordingly, claim 4 is canceled to overcome the objection to the drawings.

**Claim rejections – 35 U.S.C. §103**

Claims 1-3 and 6-14 have been rejected under 35 U.S.C. §103 (a) as unpatentable over Rowan, U.S. patent 3,484,081. Reconsideration is requested.

Independent claims 1, 12 and 14 have been amended to overcome Rowan by clarifying that the crossbars (*see, e.g.*, upper crossbar 22 and lower cross bar 24 in Fig.1) in applicant's fence module are continuous and unbroken in nature, unlike the units shown in the Rowan patent, by addition of the language homogeneously formed as suggested by the examiner in the May 16, 2006 office action. Support for the amendment may be found, for example, in Fig. 1, which shows an upper crossbar 22 and a lower crossbar 24 as a continuous, solid, homogeneously formed and unbroken member, and also in paragraph [0022] in the specification.

With respect to claims 2, 3, 6, 7, 8, 9, 10, 11 and 13, the above amendments in clarification of independent claims 1, 12 and 14, that applicant's fence module is continuous and unbroken in nature, unlike the units shown in a Rowan patent, by addition of the language homogeneously formed is believed to render these rejections moot.

Claim 5, which depends from claim 1, has been rejected under 35 U.S.C. 103 (a) as unpatentable over Rowan and in further view of Nesic, U.S. Patent 6,360,481. In consideration of the amendment to claim 1 to overcome Rowan as discussed above, it is believed that the rejection of claim 5 is rendered moot.

Claim 15, which depends from claim 14, has been rejected under 35 U.S.C. 103 (a) as unpatentable over Rowan and in further view of Summers, U.S. Patent 5,964,452.


In consideration of the amendment to claim 14 to overcome Rowan as discussed above, it is believed that the rejection of claim 15 is rendered moot.

For the foregoing reasons, Applicant respectfully requests reconsideration and allowance of all claims as amended.

If the Examiner believes it would help to advance the prosecution, the undersigned attorney would welcome the opportunity to discuss the application in a further telephone interview and can be reached at (312) 201-0011.

Respectfully submitted,

Dated this 1<sup>st</sup> day of August, 2006.

  
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